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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/053,143

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Thomas Deyette JR.

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EXAMINER

DAWSON, GLENN K

ART UNIT

PAPER NUMBER

3731

MAIL DATE

DELIVERY MODE

07/30/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
After the Filing of an Appeal Brief

Application No.

10/053,143

Examiner

Glenn K. Dawson

Applicant(s)

DEYETTE ET AL.

Art Unit

3731

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The reply filed 16 July 2007 is acknowledged.

1. ☐ The reply filed on or after the date of filing of an appeal brief, but prior to a final decision by the Board of Patent Appeals and Interferences, will not be entered because:
- a. ☐ The amendment is not limited to canceling claims (where the cancellation does not affect the scope of any other pending claims) or rewriting dependent claims into independent form (no limitation of a dependent claim can be excluded in rewriting that claim). See 37 CFR 41.33(b) and (c).
- b. ☐ The affidavit or other evidence is not timely filed before the filing of an appeal brief. See 37 CFR 41.33(d)(2).
2. ☐ The reply is not entered because it was not filed within the two month time period set forth in 37 CFR 41.39(b), 41.50(a)(2), or 41.50(b) (whichever is appropriate). Extensions of time under 37 CFR 1.136(a) are not available.

Note: This paragraph is for a reply filed in response to one of the following: (a) an examiner's answer that includes a new ground of rejection (37 CFR 41.39(a)(2)); (b) a supplemental examiner's answer written in response to a remand by the Board of Patent Appeals and Interferences for further consideration of rejection (37 CFR 41.50(a)(2)); or (c) a Board of Patent Appeals and Interferences decision that includes a new ground of rejection (37 CFR 41.50(b)).

3. ☒ The reply is entered. An explanation of the status of the claims after entry is below or attached.
4. ☒ Other: the rejections in the Final rejection still stand. the applicants arguments are not persuasive because virtually any vascular device which could perform the function of a filter would constitute a distal protection device. as outlined in the last rejection, a stent properly placed would perform as a filter and would filter out any material larger than its pores and after time would act to filter out even smaller particles. The device need only be capable of filtering. the examiner contends that filtering would be achieved by the stent. the fact that Turovsky may have some structure to lock the filter in an expanded condition or lock it in place relative to the vessel is irrelevant to the combination at hand. The examiner is referring to the ease by which a user gripping the handle of Turovsky could inadvertently bump the actuator 14 or 5 and start to release the filter at an inopportune time. The rotatable actuators of Gilson and Olson would require a purposeful rotation of the button to obtain the desired motion to cause the filter to be deployed. Therefore, substituting the actuators of Olson or Gilson would have been an obvious design choice.


 GLENN K. DAWSON
 PRIMARY EXAMINER